

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JAY C. BUTLER,

Defendant.

CASE NO. 8:07CR98

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's motion, filed through counsel, to reduce his sentence as a result of the recent amendments to the crack cocaine sentencing guidelines (Filing No. 96). Butler also filed a supporting brief. (Filing No. 97.) The probation office has completed and filed a worksheet. (Filing Nos. 83, 100.)

The Defendant was sentenced as a career offender. (Filing Nos. 57, 62.) Butler did not file a direct appeal. This Court summarily denied Butler's motion brought under 28 U.S.C. § 2255. (Filing Nos. 101, 102.)

Butler seeks a downward adjustment of two levels under the new crack cocaine guidelines. However, the Eighth Circuit has stated that a career offender's base offense level is determined under U.S.S.G. § 4B1.1 and not U.S.S.G. § 2D1.1. The sentencing commission lowered the levels under § 2D1.1(c) and did not amend § 4B1.1. *United States v. Tingle*, 524 F.3d 839, 840 (8th Cir.), *cert. denied*, 129 S. Ct. 473 (2008). Therefore, the crack cocaine amendments have no effect on Butler's case. *Id.* His motion to reduce his sentence is denied.

IT IS ORDERED that the Defendant's motion to reduce his sentence as a result of the recent amendments to the crack cocaine sentencing guidelines (Filing No. 96) is denied.

DATED this 1st day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge